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TUROCY & WATSON, LLP 127 Public Square 57th Floor, Key Tower CLEVELAND, OH 44114			EXAMINER DUNHAM, JASON B	
			ART UNIT	PAPER NUMBER
			3625	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket1@thepatentattorneys.com

hholmes@thepatentattorneys.com

lpasterchek@thepatentattorneys.com

### Office Action Summary

**Application No.**

09/838,970

**Applicant(s)**

BLANKENSHIP ET AL.

**Examiner**

JASON B. DUNHAM

**Art Unit**

3625

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-48, 50-54 and 58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48, 50-54 and 58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 23, 2009 has been entered. Applicant amended claims 30, 37, 38, and 43 and canceled claims 49 and 55-57. Claims 1-48, 50-54, and 58 are pending.

### **Claim Rejections - 35 USC § 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 38-44 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Referring to claim 38. This claim is directed to a "system" for managing welding consumables. The system has three parts: (1) a consumable monitor "component", (2) a customer "component", and (3) a supplier "component." The Applicants' specification defines a "component" as follows:

*"A 'component' is a computer-related entity, either hardware, a combination of hardware and software, software, or software in execution. For example, a component may be, but is not limited being, a process*

*running on a processor, a processor, an object, an executable, a thread of execution, a program and a computer. By way of illustration, both an application running on a server and the server can be components."* (see page 5, lines 15-20).

Thus the Applicants' specification teaches that a "component" can be construed as a program (i.e. software). Therefore, the "system" of claim 38 comprises three programs. The Examiner notes that a program or software is nothing more than a series of instructions to perform an action (i.e. an algorithm) (see Microsoft Press Dictionary). Hence, the Applicants' "system" can be construed as comprising three algorithms. None of these "components" recite anything physical to constitute a "system" (i.e. an apparatus) (see MPEP 2106.01(I)). The examiner notes that applicant amended the claim to recite a "memory", however, the claim merely recites the memory is "coupled" to a processor and "pertains" to storing data for one of the components. The memory and processor are not functionally tied to the disembodied software components.

Referring to claims 43 and 44. Claims 43 and 44 are rejected under the same rationale as set forth above in claim 38.

Referring to claims 39-42. Claims 39-42 are dependent on claim 38. However, these claims fails to correct the deficiency of claim 38 and are rejected under the same rationale as set forth above in claim 38.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-48 and 50-58 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 37, 38, 43, 45, 48, 50, and 54 recite the limitation "...information that includes an indication of ownership of a welding consumable(s)..." This limitation does not have proper written description support in the specification. The Applicant's specification discloses that a supplier can maintain an inventory of welding consumables at a customer location (i.e. vendor managed inventory) (see specification page 10, lines 4-6; page 20, lines 19-21). However, the specification fails to disclose a welder that transmits information including "...an indication of ownership of a welding consumable(s)..."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-9, 12, 15, 16, 21-23, 25-27, 32, 33, 35, 37, and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett "Using a microcomputer is costing and selling" (hereafter referred to as Bennett) in view of Dialog File 148 "Retrospective" (hereafter referred to as Dialog).**

Referring to claim 1: Bennett discloses a system for managing welding consumables, comprising:

- a welder comprising a consumable monitor that transmits welding consumable information (Abstract: "The machine may be used to directly measure and compare costs of any welding processes by connecting it to various sensors which monitor the weld as it is produced."; page 342, lines 22-26: "...certain parameters such as welding current, arc voltage and wire usage rate are monitored by appropriate transducers and the signals relayed to an approved instrument box"; page 343, lines 40-46; page 342, lines 25 and 26: "...the signals relayed to an approved instrument box.");
- a remote system that interfaces to the welder, the remote system facilitates management of welding consumables for the welder based at least in part

upon information received from the consumable monitor (page 341, line 38 – page 342, line 1; page 342, lines 41-47; page 343, lines 36-46).

Bennett does not expressly disclose that the remote system interfaces to the welder *via a computer network*. However, Bennett discloses that a transducer relays signals to an instrument box (page 342, lines 22-26). Furthermore, Dialog discloses remotely monitoring the quality of a weld via the Internet (page 1). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Dialog into the invention of Bennett. One of ordinary skill in the art would have been motivated to do so in order to remotely monitor the status of a weld as taught by Dialog.

Referring to claim 2: Bennett and Dialog teach or suggest all of the limitations of claim 1 as noted above. Furthermore, Bennett discloses that the remote system facilitates ordering and/or purchasing of a consumable based at least in part upon information received from the consumable monitor (page 341, line 38 – page 342, line 1). Bennett discloses that one of the benefits of his invention is to "...enable the welding engineer to present a clear case to purchasing department with regard to the purchase of say helium/argon mixtures..."

Referring to claim 3: The cited prior art teaches or suggests all of the limitations of claim 2 as noted above. Furthermore, Bennett discloses that the consumable is a wire and a gas (page 342, lines 22-26; page 343, lines 15-46).

Referring to claims 4, 5, and 9: The cited prior art teaches or suggests all of the limitations of claims 3 and 1 as noted above. The cited prior art does not teach the

particular use of the consumables as noted in claims 4 and 5, or that the welder is leased to the customer as noted in claim 9. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In the present case, the cited prior art is capable of performing the intended use of the consumables and lease agreement because the cited prior art has the same structure as the claim invention and because the prior art is directed to the same field of invention (i.e., monitoring a welder having consumables). Thus the limitations of claims 4, 5, and 9 do not patentably distinguish the structure of the claimed invention from the prior art.

Referring to claims 6-8: The cited prior art teaches or suggests all of the limitations of claim 2 as noted above. The cited prior art does not teach that the ordering and/or purchasing of the consumable is based on a customer ordering model, a vendor managed replenishment contract, or the nature of the ownership of the consumable. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited system. Therefore these limitations are deemed to be nonfunctional descriptive material. The elements of the system would be the same regardless of any contract or ownership of the consumable. The differences



between the Applicants' invention and the prior art are merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have any contract or ownership model in the cited prior art because such information does not functionally or structurally relate to the elements of the claimed system and because the subjective interpretation of such information does not patentably distinguish the claimed invention.

Referring to claims 12 and 15: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Dialog teaches that the network employs TCP/IP (page 1) and the Internet (page 1). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Dialog into the invention of Bennett. One of ordinary skill in the art would have been motivated to do so in order to remotely monitor the status of a weld via the Internet as taught by Dialog.

Referring to claim 16: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Bennett teaches an arc quality monitor providing information regarding the weld quality to the remote system (page 342, lines 22-26).

Referring to claims 21-23, 25-27, 32, 33, 35 and 37: Claims 21-23, 25-27, 32, 33, 35, and 37 are rejected under the same rationale as set forth above in claims 1, 3-5, 12,

15, 16. Regarding claim 37, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The newly added limitation does not recite structure followed by functional limitations.

Referring to claim 54: Claim 54 is rejected under the same rationale as set forth above in claim 1.

**Claims 10, 11, 17-19, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett “Using a microcomputer is costing and selling” (hereafter referred to as Bennett) in view of Dialog File 148 “Retrospective” (hereafter referred to as Dialog) and further in view of Tarr et al. (US 5,184,179) (hereafter referred to as Tarr).**

Referring to claims 10 and 11: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the remote system enforces an agreement or contract or that the customer is invoiced by the system for consumables based on information received from the monitor. However, Tarr discloses a remote monitoring system (Figure 3, items “60” and “40”) that that invoices a customer (Figure 1, item “36”; Figure 3, item “54”) and provides service contract information (col. 3, lines 12-49). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the

teachings of Tarr into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow appropriate personnel to provide the appropriate service requirement and maintain accurate billing records as taught by Tarr (col. 3, lines 40-47).

Referring to claim 17: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that a customer is invoiced by the system for consumables based on weld quality information received from the monitor. However, Tarr discloses a remote monitoring system (Figure 3, items "60" and "40") that that invoices a customer (Figure 1, item "36"; Figure 3, item "54"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Tarr into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to maintain accurate billing records as taught by Tarr (col. 3, lines 40-47). Tarr does not teach that the invoice is based on weld quality. However, the Examiner notes that this limitation is not functionally or structurally involved in the elements of the recited system. Therefore this limitation is deemed to be nonfunctional descriptive material. The elements of the recited system would be the same regardless of what information the invoice was based on. The difference between the content of the Applicants' invoice and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been

obvious to a person of ordinary skill in the art at the time the invention was made to base the invoice of the prior art on any information because such information does not functionally or structurally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 18: The cited prior art teaches or suggests all of the limitations of claim 17 as noted above. Furthermore, Bennett discloses that the remote system tracks patterns of usage of welding consumables (page 342, lines 22-26; "...wire usage rate are monitored...")

Referring to claim 19: The cited prior art teaches or suggests all of the limitations of claim 17 as noted above. The cited prior art does not teach the particular use of the remote system as noted in claim 19. However, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In the present case, the cited prior art is capable of performing the intended use because the cited prior art has the same structure as the claim invention and because the prior art is directed to the same field of invention (i.e., monitoring a

welder having consumables). Thus the limitation of claim 19 does not patentably distinguish the structure of the claimed invention from the prior art.

Referring to claim 36: Claim 36 is rejected under the same rationale as set forth above in claim 17.

**Claims 13, 14, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett “Using a microcomputer is costing and selling” (hereafter referred to as Bennett) in view of Dialog File 148 “Retrospective” (hereafter referred to as Dialog) and further in view of Official Notice.**

Referring to claim 13: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that information is exchanged between the welder and the remote system using at least one of HTML, SHTML, VB Script, JAVA, CGI Script, dynamic HTML, ASP, ActiveX, XML, PDF, EDI, and WML format. However, Official Notice is taken that it is old and well known in the art to use HTML format to exchange information. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate HTML into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to present data in a user-friendly format.

Referring to claim 14: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach a LAN connection. However, Official Notice is taken that it is old and well known in the art to use a LAN connection to connect two or more devices. Therefore it would have been obvious to

one of ordinary skill in the art, at the time the invention was made, to incorporate a LAN connection in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow two or more remote devices to communicate via a common network.

Referring to claim 34: Claim 34 is rejected under the same rationale as set forth above in claim 13.

**Claims 20 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett “Using a microcomputer is costing and selling” (hereafter referred to as Bennett) in view of Dialog File 148 “Retrospective” (hereafter referred to as Dialog) and further in view of Sekizawa (US 6,681,349 B2).**

Referring to claim 20: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the remote system performs resource or forecast planning. However, Sekizawa discloses a remote monitoring system that performs resource and forecast planning (col. 46, lines 15-40). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Sekizawa into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to set up a yearly plan of manufacturing for the consumables as taught by Sekizawa (col. 46, lines 35-40).

Referring to claims 28-31: Claims 28-31 are rejected under the same rationale as set forth above in claim 20.

**Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett “Using a microcomputer is costing and selling” (hereafter referred to as Bennett) in view of Dialog File 148 “Retrospective” (hereafter referred to as Dialog) and further in view of Manchala et al. (US 6,405,178 B1) (hereafter referred to as Manchala).**

Referring to claim 24: The cited prior art teaches or suggests all of the limitations of claim 22 as noted above. The cited prior art does not teach initiating an order based at least in part upon information received from the consumable monitor. However, Manchala discloses this limitation (col. 2, lines 31-53). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Manchala into the invention of Bennett. One of ordinary skill in the art would have been motivated to do so in order to take into account the changes in price of the consumable as taught by Manchala (col. 1, lines 16-20; col. 3, lines 15-25; col. 4, lines 47-59).

**Claim 38 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett “Using a microcomputer is costing and selling” (hereafter referred to as Bennett).**

Referring to claim 38: Bennett discloses a system for managing welding consumables, comprising:

- a consumable monitor that monitors consumable usage and/or consumable status of a welder (Abstract: "The machine may be used to directly measure and compare costs of any welding processes by connecting it to various sensors which monitor the weld as it is produced."; page 342, lines 22-26: "...certain parameters such as welding current, arc voltage and wire usage rate are monitored by appropriate transducers and the signals relayed to an approved instrument box"; page 343, lines 40-46);
- a component to that interfaces the consumable monitor facilitate welding resource management based at least in part upon information regarding consumable usage received from the consumable monitor component (page 341, line 32 – page 342, line 1: "...a serious study of all welding cost aspects is essential to obtain bottom line costs for the finished weld...This will enable the welding engineer to present a clear case to purchasing department with regard to the purchase of say helium/argon mixtures... "; page 342, lines 41-47: "The second phase was the construction of suitable hardware and software so that the same machine could be used to monitor the weld process semi-automatically and so produce costing information." ; page 343, lines 36-46);
- a component that receives information and facilitates purchasing of welding consumables (page 341, line 38 – page 342, line 1), and
- wherein memory operatively coupled to a processor is capable of retention of at least one piece of information that pertains to the consumable monitor component (page 341, line 38 – page 342, line 1),



Bennett does not disclose that the second and third components are "customer" and "supplier" components respectively. However, the Examiner notes that these limitations are not functionally involved in the elements of the recited system. Therefore these limitations are deemed to be nonfunctional descriptive material. The elements of the recited system would be the same regardless of what names were given to the components. The difference between the Applicants' invention and the prior art are merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to give the components in Bennett's system any name because such information does not functionally or structurally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claim 40: The cited prior art teaches or suggests all of the limitations of claim 38 as noted above. Furthermore, Bennett discloses that the consumable is a wire and a gas (page 342, lines 22-26; page 343, lines 15-46).

Referring to claims 41 and 42: The cited prior art teaches or suggests all of the limitations of claim 40 as noted above. The cited prior art does not teach the particular use of the consumables as noted in claims 41 and 42. However, a recitation of the intended use of the claimed invention must result in a structural difference between the

claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). In the present case, the cited prior art is capable of performing the intended use of the consumables because the cited prior art has the same structure as the claim invention and because the prior art is directed to the same field of invention (i.e., monitoring a welder having consumables). Thus the limitations of claims 41 and 42 do not patentably distinguish the structure of the claimed invention from the prior art.

**Claims 39, 43, 45, 46, 48, and 50-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett "Using a microcomputer is costing and selling" (hereafter referred to as Bennett) in view of Manchala et al. (US 6,405,178 B1) (hereafter referred to as Manchala).**

Referring to claim 39: Bennett teaches or suggests all of the limitations of claim 38 as noted above. Bennett does not disclose at least one of a production control component, a financial accounting component and a materials management component. However, Manchala discloses this limitation (col. 3, lines 26-30). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Manchala into the system of

Bennett. One of ordinary skill in the art would have been motivated to do so in order to automate the material handling process as taught by Manchala.

Referring to claim 43: Bennett discloses a system for managing welding consumables comprising:

- a consumable monitor component that monitors consumable usage of a welder (Abstract: "The machine may be used to directly measure and compare costs of any welding processes by connecting it to various sensors which monitor the weld as it is produced."; page 342, lines 22-26: "...certain parameters such as welding current, arc voltage and wire usage rate are monitored by appropriate transducers and the signals relayed to an approved instrument box"; page 343, lines 40-46);
- an aggregation component for aggregating consumable usage that receives welding information from the consumable monitor (page 342, lines 22-28; Figure 1);
- a component that receives consumable information to facilitate purchasing of welding consumables (page 341, line 38 – page 342, line 1; page 342, lines 41-47; page 343, lines 36-46); and
- wherein memory operatively coupled to a processor is capable of retention of at least piece of information that pertains to one of the aforementioned components (page 341, line 38 – page 342, line 1; page 342, lines 41-47; page 343, lines 36-46);

Bennett does not disclose that the component that facilitates purchasing is a "supplier" component. However, the Examiner notes that this limitation is not functionally involved

in the elements of the recited system. Therefore this limitation is deemed to be nonfunctional descriptive material. The elements of the recited system would be the same regardless of the name given to the component. The difference between the Applicants' invention and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to give the components in Bennett's system any name because such information does not functionally or structurally relate to the elements of the claimed system and because the subjective interpretation of information does not patentably distinguish the claimed invention. Bennett does not disclose an inventory replenishment component that receives information from the aggregation component. However, Manchala teaches this limitation (col. 3, lines 26-30). Bennett does not disclose a procurement management component that determines whether to initiate reordering of the consumable based at least in part on inventory data and information associated with a vendor managed replenishment contract. However, Manchala discloses this limitation (col.3 lines 31-53; col. 4, lines 50-62). Bennett does not disclose a reorder proposal component for generating a reorder proposal once the procurement management component has initiated reordering of the consumable. However, Manchala discloses this limitation (col. 4, lines 26-34). Bennett does not disclose an authorization component that receives authorization for the reorder proposal

received from the reorder proposal component. However, Manchala discloses this limitation (col. 4, lines 22-25, lines 62-66). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Manchala into the system of Bennett. One of ordinary skill in the art would have been motivated to do so in order to take into account the changes in price of the consumable as taught by Manchala (col. 1, lines 16-20; col. 3, lines 15-25; col. 4, lines 47-59).

Referring to claim 45: Bennett discloses a method for managing welding consumables comprising: receiving information from a consumables monitor regarding consumable usage of a welder (Abstract: "The machine may be used to directly measure and compare costs of any welding processes by connecting it to various sensors which monitor the weld as it is produced."; page 342, lines 22-26: "...certain parameters such as welding current, arc voltage and wire usage rate are monitored by appropriate transducers and the signals relayed to an approved instrument box"; page 343, lines 40-46). Bennett does not disclose that the information is received from a computer network. However, Manchala discloses this limitation (col. 2, lines 41-44). Bennett does not disclose determining whether supply of a welding consumable has fallen below ordering threshold. However, Manchala discloses this limitation (col. 3, lines 31-36; col. 4, lines 16-22). Bennett does not disclose ordering the welding consumable based at least in part upon the information received regarding the consumable usage. However, Manchala discloses ordering a consumable for a device (col. 2, lines 31-53). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Manchala into the invention of Bennett. One of ordinary

skill in the art would have been motivated to do so in order to take into account the changes in price of the consumable as taught by Manchala (col. 1, lines 16-20; col. 3, lines 15-25; col. 4, lines 47-59).

Referring to claim 46: Bennett further discloses aggregating information regarding the consumable usage (page 342, lines 22-28).

Referring to claims 48 and 50-53: Claims 48 and 50-53 are rejected under the same rationale as set forth above in claims 43, 45, and 46.

**Claim 44 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over B.J. Bennett "Using a microcomputer is costing and selling" (hereafter referred to as Bennett) in view of Manchala et al. (US 6,405,178 B1) (hereafter referred to as Manchala) in view of Official Notice.**

Referring to claim 44: The cited prior art teaches or suggests all of the limitations of claim 43 as noted above. The cited prior art does not teach that the reorder is transmitted via EDI or XML. However, Official Notice is taken that it is old and well known in the art to use EDI to transmit and order. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to use a well-known communication system for placing an order.

Referring to claim 47: The cited prior art teaches or suggests all of the limitations of claim 45 as noted above. The cited prior art does not teach aggregating information

regarding the consumable ordering. However, Official Notice is taken that it is old and well known in the art to aggregate orders. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to aggregate the orders in the invention of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to negotiate a better price for the consumables through bulk ordering.

***(10) Response to Argument***

Applicant's arguments, filed January 23, 2009, with respect to the previous 35 USC 112, 2<sup>nd</sup> paragraph rejections have been fully considered and are persuasive. The rejections of claims 37-44 has been withdrawn.

Applicant's arguments regarding the 35 USC 101 rejection to claims 38-44 have been fully considered but they are not persuasive. Please see the above noted rejection and explanation regarding functionally tying the memory and processor to the software components.

Applicant's arguments regarding the 35 USC 112, first paragraph rejection to claims 1-48 and 50-58 have been fully considered but they are not persuasive. Applicant argues that the disclosure contained in page 10, lines 4-14 provides support for transmitting welding consumable information including an indication of ownership, as recited in independent claims 1, 37, 38, 43, 45, 48, 50, and 54. The examiner disagrees. The cited portion of the disclosure discloses monitoring usage or

consumables but provides no support for transferring an indication of ownership of the consumables, merely the amount of consumables used.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Dunham/ 4/27/09